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VIRGINIA CODE COMMISSION

Wednesday, August 29, 2007 – 10 a.m.

General Assembly Building, 6th Floor
Speakers Conference Room
Richmond, Virginia 23219

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards; Ryan McDougle; S. Bernard Goodwyn; James F. Almand; Robert L. Calhoun; Thomas M. Moncure, Jr.; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: Robert Hurt

OTHERS PRESENT: James P. Guy, Virginia Bar Association; Donna Pugh Johnson, Virginia Agribusiness Council; Martha Moore, Virginia Farm Bureau; Perida Giles, Doug Saunders, Rebecca Askew, Robert E. Bailey, Tom Smith, Keith Tignor, Don Delorme and Frank Fulgham, Department of Agriculture and Consumer Services; Larry Getzler and Jeannine Rose, Department of Planning and Budget; .

STAFF PRESENT: Marty Farber, Ellen Porter, Elizabeth Palen, Jane Chaffin

CALL TO ORDER

Delegate Landes called the meeting to order at 10:05 a.m.

APPROVAL OF MINUTES

A motion was made by Mr. Ferguson and seconded by Senator Calhoun to approve the minutes of the June 20, 2007, meeting. The motion was approved.

APPOINTMENT OF ADMINISTRATIVE LAW ADVISORY COMMITTEE

The Chairman noted that at the previous meeting Jim Guy, Chair of the Administrative Law Section Council of the Virginia Bar Association (VBA), presented a proposed slate of individuals for appointment to the Administrative Law Advisory Committee (ALAC) for the Commission's consideration. It was noted that Suzette Denslow's name appeared on the list as a local government representative, but Ms. Denslow currently works for the Kaine Administration and is no longer with the Virginia Municipal League. Phyllis Errico with the Virginia Association of Counties has indicated an interest in serving on ALAC. Mr. Ferguson moved to approve the VBA proposed slate with the substitution of Phyllis Errico for Suzette Denslow. The motion was seconded by Mr. Moncure and approved.

Mr. Moncure made a motion to appoint Chris Nolen to chair ALAC. Mr. Ferguson seconded the motion and the motion carried.

The Chairman conveyed the Commission's sincere thanks to Jim Guy for leading the effort to reinstate ALAC and developing a list of viable candidates willing to serve.

TITLE 3.1 RECODIFICATION

Chapter 38, Plants and Plant Products Inspection Law. Ellen Porter presented Chapter 38 to the Commission for review. Ms. Porter reviewed the chapter drafting note, and highlighted that the definition of "nursery stock" had been broadened to include

1 substances that are packed with plants, such as containers, soil and other packing
2 material. The consensus of the Commission was that the broadened language improved
3 the definition of "nursery stock" in § 3.2-3800.

4 The Commission discussed the delegation of authority issue found in § 3.2-3801 B 1. A
5 suggestion was made to move the language authorizing the Commissioner to delegate his
6 authority to employees of the Department to the beginning of Chapter 38. It was pointed
7 out that retaining the delegation of authority language is unnecessary because § 2.2-604
8 provides that the chief executive officer may delegate any task to any department
9 employee unless otherwise provided by law.

10 After discussion, the Commission reversed its decision made at the June 20, 2007,
11 meeting to add "or his designee" after "Commissioner" throughout the title. Mr. Ferguson
12 made a motion to remove the phrase, "or his designee" throughout the title; delete
13 subdivision B 1 of § 3.2-3801 relating to delegation of the Commissioner's authority;
14 specifically state when a power cannot be delegated, and amend the drafting note to
15 explain why the delegation of authority language was being removed. The motion was
16 seconded by Senator Calhoun. The motion carried.

17 In § 3.2-3805 on page 7, Mr. Ferguson asked staff to make the requirements in
18 subsections A (inspection certificate required for intrastate transport of nursery stock) and
19 B (inspection certificate required for out-of-state transport) parallel.

20 Staff explained that the term "nursery stock" was changed to "plants or plant products" in
21 §§ 3.2-3807 through 3.2-3810 in order to clarify the Department of Agriculture and
22 Consumer Services' (VDACS) authority to inspect products such as lumber that did not
23 fall under the definition of "nursery stock." After discussing the issue, the Commission
24 directed staff to change the reference from "plants or plant products" to "nursery stock or
25 plant products offered for sale or distribution" in §§ 3.2-3807 through 3.2-3810.

26 Chapter 44, Beekeeping. Ms. Porter explained that mostly technical changes were made
27 in Chapter 44.

28 The Commission discussed whether § 3.2-4411 (abandoned apiaries) is necessary. It was
29 determined after discussion that the section, which sets forth the process for handling an
30 apiary deemed to be abandoned, should be retained. There are benefits in leaving a
31 healthy hive, but a diseased hive could cause problems.

32 Ms. Porter stated that § 3.2-4412, which relates to unsanitary conditions in a honey
33 house, would be covered under the Food and Drink chapter. The Commission agreed that
34 it was a good idea to repeal the section; however, felt that such a change is substantive
35 and, therefore, not appropriate in the title revision. Mr. Ferguson made a motion to retain
36 the § 3.2-4412 in the title revision, but to repeal the section in separate legislation.
37 Senator McDougle seconded the motion and the motion was approved.

38 Chapter 45, Grading, Packing and Marking of Apples. Marty Farber presented Chapter
39 45 for the Commission's review. Chapter 45 applies only to apples in packaged form. Mr.
40 Farber explained that Article 2, which provides for the Apple Board, has been
41 redesignated as Chapter 12, leaving only provisions relating to the grading, packing and
42 marking of apples. Otherwise, all changes are considered technical in nature.

1 Chapter 46, Cold Storage of Apples and Peaches. Mr. Farber stated that only technical
2 changes were made in Chapter 46.

3 Chapter 41, Seed Potatoes. Ellen Porter presented Chapter 41. She explained that the
4 reference to "Irish" as a description of potatoes was deleted as inaccurate. The reference
5 is now "seed potatoes."

6 The model commodity board language adopted for the other commodity boards
7 previously approved by the Commission was used in Chapter 41.

8 There was discussion of the general penalty classification stated in § 3.2-4111. The
9 current language in § 3.1-295 classifies the penalty as a misdemeanor punished by a fine
10 not to exceed \$500 or 12 months in jail, or both. Staff drafted the new language with the
11 penalty classified as a Class 3 misdemeanor. The Commission, by consensus, agreed to
12 change the Class 3 misdemeanor to a Class 1 misdemeanor.

13 Chapter 36, Virginia Fertilizer Act. Mr. Farber noted that the current chapter note for
14 Chapter 36 explains the replacement of the term "agent" with "designee." Lines 6 and 8
15 of the chapter note will be revised to reflect the Commission's decision to remove "or his
16 designee" from the title (see discussion under Chapter 38).

17 Staff was asked to clarify that the requirement that the contractor-applicator guarantee
18 compliance with certain provisions of Chapter 36 (§ 3.2-3608 C) is for the customer's
19 benefit.

20 Chapter 37, Virginia Agriculture Liming Materials. Staff was asked to make a similar
21 change as was made in § 3.2-3608 C clarifying the language regarding a guarantee to the
22 customer.

23 A member commented that the Sale of Substandard Liming Material Fund referenced in
24 § 3.2-3709 D (page 17, line 3) does not have any substance. There are no provisions
25 establishing the fund. Staff was asked to work with VDACS to determine if it would be
26 appropriate to add the boilerplate special fund language.

27 There was discussion regarding the use of "circuit court" in a number of places
28 throughout the chapter. The word "court" and the term "court of competent jurisdiction"
29 were changed to "circuit court." The point was made that if the crime is a felony, the term
30 "circuit court" is appropriate; however, certain violations could be handled in a general
31 district or juvenile court. The consensus of the Commission was to make a titlewide
32 change to use the term "appropriate court."

33 **OTHER BUSINESS AND PUBLIC COMMENT**

34 The Commission decided to cancel the September 26 meeting and schedule a two-day
35 meeting in October. The October meeting will be held October 16 and 17 in Staunton.

36 No one came forward during the designated public comment period.

37 **ADJOURNMENT**

38 There being no further business to come before the Commission, the meeting adjourned
39 at 2:15 p.m.